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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ARDREDA JOHNSON, Plaintiff and Appellant, v. PENNYMAC CORP., Defendant and Respondent.	B287054 (Los Angeles County Super. Ct. No. BC576027)

APPEAL from a judgment of the Superior Court of Los Angeles County. John P. Doyle, Judge. Affirmed in part and dismissed in part.

Ardreda Johnson, in pro. per.; J. Wright Law Group and Jamie Wright for Plaintiff and Appellant.

Theodora Oringher and Roy Z. Silva for Defendant and Respondent.

This action involves claims by Plaintiff Ardreda Johnson (Johnson) against defendant PennyMac Corp. (PennyMac) for, among other things, unfair debt collection practices pertaining to a mortgage on Johnson's home. Her action was dismissed after the trial court sustained PennyMac's demurrer to the first amended complaint (FAC) without leave to amend. On appeal, Johnson seeks review of (1) the August 30, 2017 order granting PennyMac's motion to set aside a default judgment in favor of Johnson, and (2) the October 11, 2017 order, sustaining PennyMac's demurrer.

We dismiss the portion of the appeal pertaining to the order setting aside the default and default judgment. We affirm the order sustaining the demurrer without leave to amend and the subsequent judgment.

FACTS[1]

The Pleadings

Johnson filed a complaint on March 20, 2015.[2] She filed the FAC about six months later.

According to the FAC, Johnson obtained a loan from First NLC to finance her single family residence (property) and executed a promissory note. The loan was secured by a recorded

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[1] In reviewing a trial court's decision to sustain a demurrer, we must accept as true all material allegations of fact that are well-pleaded in the operative complaint. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

We granted PennyMac's amended motion to augment the record to include two requests for judicial notice filed below, a notice of entry of order filed on September 7, 2017, and the trial court's October 11, 2017 minute order.

[2] The original complaint is not in the appellate record.

deed of trust (deed of trust). First NLC assigned the deed of trust to CitiMortgage, Inc.; that assignment was subsequently recorded on June 8, 2011. A second assignment, which was recorded on February 12, 2012, transferred the deed of trust from CitiMortgage, Inc. to PNMAC Mortgage Opportunity Fund Investors, LLC (Opportunity Fund). A few months later, a third assignment was recorded on April 11, 2012. It evinced an assignment of the deed of trust from CitiMortgage, Inc. to PennyMac.

On June 17, 2015, Johnson served PennyMac with a Truth In Lending Act (15 U.S.C. § 1601 et seq.) notice of rescission of the loan transaction because First NLC was not the true lender; First NLC did not disclose the identity of the true lender; there was no mutual consent between Johnson and the true lender; and PennyMac had no rights under the deed of trust. Despite the rescission notice, PennyMac "continually attempt[ed] to enforce the debt and foreclose on" the property. Also, PennyMac "continue[d] with its collection efforts of the cancelled debt, demand[ed] payment of false amounts, and . . . threatened action prohibited by law."

The FAC alleged the following five causes of action: (1) rescission and damages under the Truth In Lending Act, (2) violation of the Rosenthal Fair Debt Collection Practices Act (Civ. Code, § 1788 et seq.) (Rosenthal Act), (3) quiet title to the property, (4) cancellation of instruments, and (5) declaratory relief regarding rescission of the loan transaction under the Truth In Lending Act. With respect to the Rosenthal Act cause of action, Johnson alleged: PennyMac "has . . . take[n] actions not permitted by law, including but not limited to attempting to foreclosure upon a void security interest, falsely stating the

amount of a debt, increasing the amount of a debt by including amounts that are not permitted by law or contract, and using unfair and unconscionable means in an attempt to collect a debt."

Default Judgment

Pursuant to a written request by Johnson, PennyMac's default was entered on October 30, 2015. On March 2, 2016, the trial court entered a default judgment that provided quiet title against PennyMac, cancellation of the deed of trust, and injunctive relief.

Order Vacating Default Judgment

PennyMac filed a motion to vacate entry of default and default judgment pursuant to Code of Civil Procedure section 473.5 on the ground that it did not have actual notice of Johnson's action. On August 30, 2017, the trial court granted the motion.

Demurrer; Dismissal

PennyMac demurred to the FAC and argued that it should never have been sued by Johnson because it did not fund her loan, it did not hold a security interest in her property, and it was not a debt collector seeking repayment of loan funds. According to PennyMac, the April 11, 2012 assignment, was void because it was rescinded by CitiMortgage, Inc. and PennyMac in October 2012. PennyMac asked the trial court to take judicial notice of the rescission of the April 11, 2012 assignment, that was recorded on October 16, 2012.

Johnson opposed the demurrer.[3]

On October 11, 2017, the trial court granted PennyMac's request for judicial notice and sustained the demurrer to the FAC

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[3] Johnson's opposition is not in the appellate record.

without leave to amend. In its minute order, the trial court explained its thought process as follows: ". . . [Johnson] states that she abandons her [Truth In Lending Act] claims. Thus, the [d]emurrer is sustained as to the first cause of action and the fifth cause of action for declaratory relief predicated on" the alleged rescission pursuant to the Truth In Lending Act. "[Johnson] does not address [her inability to] quiet title or cancel any instrument pertaining to [PennyMac] [based on the fact that it] does not have any security interest in the . . . property. Thus, [PennyMac's] arguments as to the third and fourth causes of action are conceded. [Citation.] The demurrer is sustained as to the third and fourth causes of action." With respect to the second cause of action under the Rosenthal Act, Johnson argued the demurrer should be overruled because the rescission of the assignment was void due to PennyMac's failure to comply with Civil Code section 1095. However, the face of the notice of assignment establishes compliance with the dictates of the statute. "Interestingly, [Johnson] seems to argue that [PennyMac] has no interest in the deed of trust because CitiMortgage[, Inc.] could never have assigned the deed of trust to [PennyMac] in the first place because the chain of title demonstrates that Citi[M]ortgage[, Inc.] assigned the deed of trust to [Opportunity Fund] prior to attempting an assignment to [PennyMac]. [Citation.] In other words, [Johnson] appears to agree that [PennyMac] has no interest in the . . . deed of trust so as to be a debt collector currently seeking to wrongfully foreclose on [her] property. The [d]emurrer is sustained as to the second cause of action[]."

The judgment of dismissal was executed and filed stamped on October 27, 2017. Johnson filed her notice of appeal on December 19, 2017.

DISCUSSION[4]

I. Review of the Order Vacating the Default and Default Judgment is Unavailable; this Portion of the Appeal Must be Dismissed.

Tacitly, Johnson invokes Code of Civil Procedure section 906 and seeks review of the order vacating the default and default judgment in connection with her appeal from the judgment of dismissal. The review she seeks is unavailable because the order was a separately appealable postjudgment order (Code Civ. Proc. § 904.1, subd. (a)(2); *Younessi v. Woolf* (2016) 244 Cal.App.4th 1137, 1143) and was not an intermediate ruling. (Code Civ. Proc., § 906 ["Upon an appeal pursuant to Section 904.1 or 904.2, the reviewing court may review the verdict or decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from"].)

Neither is the order reviewable under Code of Civil Procedure section 904.1, subdivision (a)(2), which provides that orders made after appealable judgments are themselves appealable. "If an order is appealable, an aggrieved party must file a timely notice of appeal from the order to obtain appellate review. [Citation.]" (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212, 239.) Johnson did not file an appeal

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[4] In connection with this appeal, PennyMac requests that we take judicial notice of a federal complaint filed by Johnson involving the property. We decline to do so because the federal complaint is unnecessary to our resolution of this appeal. (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials not "necessary, helpful, or relevant"].)

from the August 30, 2017 order, vacating the default and default judgment.[5]

Because we lack jurisdiction to review the order setting aside the default and default judgment, that portion of the appeal must be dismissed. (*DeZerega v. Meggs* (2000) 83 Cal.App.4th 28, 43.)

II. Review of the Order Sustaining the Demurrer Without Leave to Amend.

In connection with Johnson's appeal from the judgment of dismissal, she asks us to review the order sustaining the demurrer without leave to amend. Review is appropriate under Code of Civil Procedure section 906. She urges reversal with respect to her cause of action under the Rosenthal Act. Her arguments lack merit.[6]

A. *Standard of Review*.

An appellate court exercises independent judgment when it analyzes an order sustaining a demurrer. "We assume the truth

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[5] During oral argument, Johnson's counsel conceded that Johnson failed to separately and timely appeal the August 30, 2017 order.

[6] Johnson broadly argues that the trial court erred when it dismissed her "claims," but she offers no argument as to her first, third, fourth and fifth causes of action. Nor does she refute the trial court's determination that she abandoned the first and fifth causes of action and conceded that the third and fourth causes of action lack merit. Consequently, we have no reason to consider these causes of action. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived"].)

of properly pleaded allegations in the complaint and give the complaint a reasonable interpretation, reading it as a whole and with all its parts in their context. [Citation.]" (*Van de Kamps Coalition v. Board of Trustees of Los Angeles Community College Dist.* (2012) 206 Cal.App.4th 1036, 1043.) Denial of leave to amend is reviewed for an abuse of discretion. (*Id.* at p. 1044.)

"'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

B. *The Pleading is Inadequate*.

Johnson offers three arguments in defense of her Rosenthal Act cause of action.

We address the arguments seriatim.

First, Johnson argues that PennyMac violated the Rosenthal Act "by failing to have a valid assignment to the consumer credit transaction. Under the Rosenthal Act, any communication by a licensed collection agency to a debtor demanding money" is prohibited by Civil Code section 1788.13, subdivision (l) "unless the claim is actually assigned to the [collection] agency." This argument is easily dispensed with. Simply put, the FAC does not allege that PennyMac is a licensed collection agency.

Second, Johnson posits that PennyMac violated Civil Code section 1788.17 [every debt collector collecting or attempting to collect a consumer debt shall comply with title 15 United States Code sections 1692b to 1692j] by violating the prohibition in

title 15 United States Code section 1692e subdivision (2)(A) against debt collectors making false representations regarding the character, amount, or legal status of any debt. The FAC alleged that PennyMac demanded payment of false amounts and falsely stated the amount of the debt. A reasonable interpretation of the FAC as a whole is that it alleged that PennyMac made these demands for payment in connection with attempts to foreclose.

The allegation is insufficient.

The trial court essentially ruled that plaintiff does not owe PennyMac a debt, and that her claim fails because Rosenthal Act remedies are only available against a creditor to whom a plaintiff actually owes a debt. The FAC establishes that Johnson did not owe PennyMac a debt because the deed of trust was assigned to Opportunity Fund before the purported assignment of the deed of trust to PennyMac. Once CitiMortgage, Inc. assigned the deed of trust to Opportunity Fund, the same deed of trust could not be assigned to PennyMac. In other words, the assignment to PennyMac was void. (*Sciarratta v. U.S. Bank National Assn.* (2016) 247 Cal.App.4th 552, 564 [second assignment void because "Chase, having assigned 'all beneficial interest' in Sciarratta's notes and deed of trust to Deutsche Bank in April 2009, could not assign again the same interests to Bank of America in November 2009"].) Furthermore, Johnson has not cited any law authorizing a Rosenthal Act claim against an entity to whom a plaintiff does not owe a debt. Consequently, Johnson has not shown that the trial court erred. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574 [an

appellant has the burden to demonstrate error by the trial court].)[7]

Third, Johnson argues that PennyMac was properly sued because the October 16, 2016 notice of rescission, was void under Civil Code section 1095. This argument is moot because the FAC establishes that PennyMac never had a cognizable interest in the deed of trust and the validity of the notice of rescission is therefore not relevant.

Turning to the merits of the argument, we note that Civil Code section 1095 provides: "When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact." Here, the notice of rescission did not transfer an estate in real property. It simply had the effect of superseding a prior void assignment. As a result, the statute did not apply. In any event, the notice of rescission was executed by CitiMortgage, Inc. and subscribed by "PennyMac Loan Services, LLC, its attorney-in-fact." Consequently, the statute was satisfied.

C. *Leave to Amend was Properly Denied*.

"'If we see a reasonable possibility that the plaintiff could cure the defect by amendment, then we conclude that the trial court abused its discretion in denying leave to amend. If we

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[7] Aside from alleging PennyMac demanded payment of false amounts and falsely stated the amount of the debt, the FAC contains other allegations of Rosenthal Act violations. We need not delve into them. These additional allegations fail for the same reason that the first two allegations fail, i.e., Johnson did not cite law permitting Rosenthal Act claims against an entity to which she did not owe a debt.

determine otherwise, then we conclude it did not.' [Citation.] "'The burden of proving such reasonable possibility is squarely on the plaintiff.'" [Citation.] To satisfy this burden, "'a plaintiff 'must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading'" by clearly stating not only the legal basis for the amendment, but also the factual allegations to sufficiently state a cause of action." (*Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 618.)

Johnson failed to explain how she can plead she owes a debt to PennyMac and therefore can allege a viable Rosenthal Act cause of action. Nor has she suggested she can allege that PennyMac was a licensed collection agency attempting to collect a debt without a valid assignment of that debt. We conclude that the trial court did not abuse its discretion when it sustained the demurrer without leave to amend.

DISPOSITION

The portion of the appeal pertaining to the order setting aside the default and default judgment is dismissed. The order sustaining the demurrer without leave to amend and the subsequent judgment are affirmed.

PennyMac shall recover its costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ